

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Clifford E. Earixson, ) No. CV-02-2543-PHX-ROS  
Petitioner, ) **ORDER**  
vs. )  
Deputy Warden S. Walker, et al., )  
Respondents. )  
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)

On December 5, 2006, Magistrate Judge Virginia Mathis issued a Report and Recommendation ("R&R). (Doc. 65) Petitioner filed objections to the R&R. (Doc. 70) For the following reasons, the Court will adopt the R&R and dismiss the petition.

**I. Background**

On August 6, 2004, the Magistrate Judge issued a R&R recommending that the petition for writ of habeas corpus be granted. On March 25, 2005, the Court adopted that R&R in part. (Doc. 49) The Court adopted the Magistrate Judge's conclusions on certain grounds, but rejected the recommendation that the petition be granted. The case was referred back to the Magistrate Judge for a supplemental R&R. On May 2, 2005, the Magistrate Judge issued a supplemental R&R recommending the petition be denied in full. Petitioner did not file any objections to the supplemental R&R. Instead, Petitioner sought a stay to

1 allow him to exhaust state remedies on claims not contained in his original habeas petition.

2 (Doc. 56) The stay was granted. (Doc. 56)

3 After exhausting his state remedies, Petitioner sought leave to amend his complaint  
 4 to include the new claims. (Doc. 57) The Magistrate Judge denied the motion to file an  
 5 amended petition because Petitioner had not complied with the rules of procedure. (Doc. 59)  
 6 Petitioner filed another motion to amend, which was also denied based on the failure to  
 7 comply with the rules of procedure. (Doc. 60, 62) Petitioner filed a third motion to amend,  
 8 which suffered from the same flaws as his previous motions. (Doc. 63) The Magistrate  
 9 Judge denied with prejudice the third motion to amend. (Doc. 64) The Magistrate Judge  
 10 then issued another R&R, referring the Court to the May 2005 supplemental R&R for the  
 11 analysis of Petitioner's remaining claims. Petitioner filed objections to the latest R&R, but  
 12 the objections are aimed at the Magistrate Judge's refusal to grant the motions to amend.<sup>1</sup>  
 13 Petitioner made no objection on the legal or factual issues addressed in the May 2005 R&R.

14 **II. Analysis**

15 The Court "may accept, reject, or modify, in whole or in part, the findings or  
 16 recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). It is "clear that the  
 17 district judge must review the magistrate judge's findings and recommendations *de novo if*  
 18 *objection is made, but not otherwise.*" United States v. Reyna-Tapia, 328 F.3d 1114, 1121  
 19 (9<sup>th</sup> Cir. 2003) (*en banc*) (emphasis in original); Schmidt v. Johnstone, 263 F. Supp. 2d 1219,  
 20 1126 (D. Ariz. 2003) ("Following Reyna-Tapia, this Court concludes that *de novo* review of  
 21 factual and legal issues is required if objections are made, 'but not otherwise.'"). District  
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24 <sup>1</sup> Petitioner was confused about the proper method for filing an amended complaint.  
 25 The Magistrate Judge sent Petitioner a copy of the Local Rule setting forth the requirements  
 26 for amended pleadings and gave him three chances to submit an amended pleading.  
 27 Petitioner never submitted a pleading in compliance with the rules of procedure. According  
 28 to the Supreme Court, "[d]istrict judges have no obligation to act as counsel or paralegal to  
*pro se* litigants." Pliler v. Ford, 542 U.S. 225, 231 (2004). In fact, providing legal advice  
 to Petitioner "would undermine [the Court's] role as impartial decisionmaker[]." Id.

1 courts are not required to conduct "any review at all . . . of any issue that is not the subject  
2 of an objection." Thomas v. Arn, 474 U.S. 140, 149 (1985).

3 Petitioner's objections are aimed at the Magistrate Judge's order denying him leave to  
4 amend his petition. Because Petitioner made no objection to the Magistrate Judge's factual  
5 or legal conclusions regarding the resolution of his claims, the R&R will be adopted in full  
6 and the petition will be denied.

7 Accordingly,

8 **IT IS ORDERED** the May 2, 2005 Report and Recommendation is **ADOPTED** and  
9 the Petition for Writ of Habeas Corpus is **DENIED WITH PREJUDICE**.

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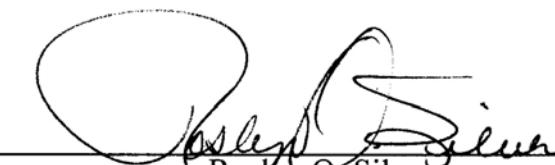
DATED this 5<sup>th</sup> day of March, 2007.

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Roslyn O. Silver  
United States District Judge

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